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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/020,716	02/09/1998	RUDOLF JUNG	0815	3572

27310 7590 06/06/2002

PIONEER HI-BRED INTERNATIONAL INC.  
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EXAMINER

NELSON, AMY J

ART UNIT PAPER NUMBER

1638

38

DATE MAILED: 06/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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Below is a communication from the EXAMINER in charge of this application  
COMMISSIONER OF PATENTS AND TRADEMARKS

### ADVISORY ACTION

#### ☒ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run \_\_\_\_\_ or continues to run \_\_\_\_\_ from the date of the final rejection
- b) ☒ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 3/21/02 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

- 1 ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
  - ☐ They raise new issues that would require further consideration and/or search. (See Note).
  - ☒ They raise the issue of new matter. (See Note).
  - ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: Applicant does not point to support for the phrase "at least about 6 moles of a sulfur containing amino acid" and hence the phrase is considered to be new matter. Also additional examination issues are raised by the claim amendments to comprise no upper limit to the ranges.

- 2 ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
- 3 ☒ Upon the filing an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: \_\_\_\_\_  
Claims objected to: \_\_\_\_\_  
Claims rejected: 76-79, 90-93, 95-111

However,

☒ Applicant's response has overcome the following rejection(s): 112, second rejection except claim 78; 101(e) rejection

- 4 ☐ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because Applicant has not shown or described all transgenic animals with increased lysine or a sulfur-containing amino acid or methods of making. Applicant has only taught said animals wherein the
- 5 ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner

☒ Other: A transgenic animal is a lysine-rich protein or a protein rich in a sulfur-containing amino acid. Even then, applicant has not taught that expression of all such proteins results in an increased lysine content or that amino acid or that increased expression of said protein does not have deleterious effects. 101(a) rejections are maintained for the reasons set forth and the suggestion of RAO to reject in the second kind of form.

*Amy Nelson*  
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